

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Robert Bailey,)
Plaintiff,) C/A No.: 3:06-3228-MBS
vs.)
Michael J. Astrue, Commissioner of)
Social Security,)
Defendant.)

)

OPINION AND ORDER

Plaintiff Robert Bailey filed an application for disability insurance benefits on December 2, 2003, alleging disability commencing August 25, 2003 because of lupus, pancreatitis, high blood pressure, and depression. The application was denied initially and upon reconsideration. Plaintiff requested a hearing before an administrative law judge (“ALJ”). The ALJ held a hearing on February 28, 2006. On May 11, 2006, the ALJ issued a decision that Plaintiff was not entitled to a period of disability or disability insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act. The decision of the ALJ became the “final decision” of the Commissioner on September 15, 2006, after the Appeals Council determined that there was no basis for granting Plaintiff’s request for review. Plaintiff thereafter brought the within action pursuant to 42 U.S.C. § 405(g), seeking judicial review of the “final decision” of the Commissioner.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Joseph R. McCrorey for a Report and Recommendation. On February 25, 2008, the Magistrate Judge filed a Report and Recommendation in which he determined that the ALJ did not appear to have fully considered the objective medical evidence supporting the opinion of Plaintiff’s treating physician, Dr. Jim Oates. In addition, the Magistrate Judge found that the ALJ’s determination that Plaintiff could perform his past relevant work was not supported by

substantial evidence. Accordingly, the Magistrate Judge recommended that the decision of the Commissioner be reversed under sentence four of 42 U.S.C. §§ 405(g) and the case be remanded to the Commissioner to properly evaluate the opinion of Plaintiff's treating physician and to determine if Plaintiff can perform his past relevant work. Plaintiff filed no objections to the Report and Recommendation. The Commissioner filed a notice of no objections on March 5, 2008.

The court is charged with making a *de novo* determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

After a thorough review of the Report and the record in this case, the court adopts the Report and Recommendation and incorporates it herein by reference. Accordingly,

It is ORDERED that the Commissioner's decision be reversed under sentence four of 42 U.S.C. §§ 405(g) and the case be remanded to the Commissioner to properly evaluate the opinion of Plaintiff's treating physician, Dr. Oates in light of all the evidence; to determine if Plaintiff can perform his past relevant work; and to continue the sequential evaluation process if necessary.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina
March 10, 2008